''(8) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is a medically distressed debtor.''.

**SEC. ___5. CREDIT COUNSELING.**

Section 109(h)(4) of title 11 United States Code, is amended by inserting ''a medically distressed debtor or'' after ''with respect to''.

**SEC. ___6. NONDISCHARGEABILITY OF CERTAIN ATTORNEYS FEES.**

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (18), by striking ''or'' at the end;

(2) in paragraph (19), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (19) the following:

''(20) in a case arising under chapter 7 of this title, owed to an attorney as reasonable compensation for representing the debtor in connection with the case.''.

**SEC. ___7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act.

**SEC. ___8. ATTESTATION BY DEBTOR.**

Any debtor who seeks relief as a medically distressed debtor in accordance with the amendments made by this title shall attest in writing and under penalty of perjury that the medical expenses of the debtor were genuine, and were not specifically incurred to bring the debtor within the coverage of the medical bankruptcy provisions, as provided in this title and the amendments made by this title.

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**SA 2829.** Mr. GRAHAM (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE ____—MEDICAL LIABILITY REFORM**

**SEC. __01. SHORT TITLE.**

This title may be cited as the ''Fair Resolution of Medical Liability Disputes Act of 2009''.

**SEC. __02. FINDINGS.**

Congress finds that—

(1) the health care and insurance industries are industries affecting interstate commerce, and the health care malpractice litigation systems throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for malpractice insurance purchased by health care providers; and

(2) the Federal Government, as a direct provider of health care and as a source of payment for health care, has a major interest in health care and a demonstrated interest in assessing the quality of care, access to care, and the costs of care through the evaluative activities of several Federal agencies.

**SEC. __03. DEFINITIONS.**

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system established under this title that provides for the resolution of covered health care malpractice claims in a manner other than through a civil action in Federal or State court.

(2) COVERED HEALTH CARE MALPRACTICE ACTION.—The term ''covered health care malpractice action'' means a civil action in which a covered health care malpractice claim is made against a health care provider or health care professional.

(3) COVERED HEALTH CARE MALPRACTICE CLAIM.—The term ''covered health care malpractice claim'' means a malpractice claim (excluding product liability claims) relating to the provision of, or the failure to provide, health care services involving a defendant covered health care professional or provider.

(4) COVERED HEALTH CARE PROFESSIONAL.—The term ''covered health care professional'' means an individual, including a physician, nurse, chiropractor, nurse midwife, physical therapist, social worker, or physician assistant—

(A) who provides health care services in a State;

(B) for whom individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), or enrolled for benefits under part B of such Act (42 U.S.C. 1395j et seq.) comprise not less than 25 percent of the total patients of such professional, as determined by the Secretary; and

(C) who is required by State law or regulation to be licensed or certified by a State a condition for providing such services in the State.

(5) COVERED HEALTH CARE PROVIDER.—The term ''covered health care provider'' means an organization or institution—

(A) that is engaged in the delivery of health care services in a State;

(B) for which individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), or enrolled for benefits under part B of such Act (42 U.S.C. 1395j et seq.) comprise not less than 25 percent of the total patients of such organization or institution, as determined by the Secretary; and

(C) that is required by State law or regulation to be licensed or certified by the State as a condition for engaging in the delivery of such services in the State.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(7) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

**SEC. __04. REQUIREMENT FOR INITIAL RESOLUTION OF ACTION THROUGH ALTERNATIVE DISPUTE RESOLUTION.**

(a) IN GENERAL.—

(1) STATE CASES.—A covered health care malpractice action may not be brought in any State court during a calendar year unless the covered health care malpractice claim that is the subject of the action has been initially resolved under an alternative dispute resolution system certified for the year by the Attorney General under section __06(a), or, in the case of a State in which such a system is not in effect for the year, under the alternative Federal system established under section __06(b).

(2) FEDERAL DIVERSITY ACTIONS.—A covered health care malpractice action may not be brought in a Federal court under section 1332 of title 28, United States Code, during a calendar year unless the covered health care malpractice claim that is the subject of the action has been initially resolved under the alternative dispute resolution system described in paragraph (1) that applied in the State whose law applies in such action.

(b) INITIAL RESOLUTION OF CLAIMS UNDER ADR.—For purposes of subsection (a), an action is ''initially resolved'' under an alternative dispute resolution system if—

(1) the ADR reaches a decision on whether the defendant is liable to the plaintiff for damages; and

(2) if the ADR determines that the defendant is liable, the ADR reaches a decision regarding the amount of damages assessed against the defendant.

(c) PROCEDURES FOR FILING ACTIONS.—

(1) NOTICE OF INTENT TO CONTEST DECISION.—

(A) IN GENERAL.—Not later than 60 days after a decision is issued with respect to a covered health care malpractice claim under an alternative dispute resolution system, each party affected by the decision shall submit a sealed statement to a court of competent jurisdiction, selected by the arbitrator, indicating whether the party intends to contest the decision.

(B) SEALED STATEMENTS.—Each sealed statement submitted to a court under subparagraph (A) shall remain sealed until the earlier of—

(i) the date on which all affected parties have submitted such statement; or

(ii) the submission deadline described in subparagraph (A).

(2) REQUIREMENTS FOR FILING ACTION.—A covered health care malpractice action may not be brought by a party unless—

(A) such party files the action in a court of competent jurisdiction not later than 90 days after the decision resolving the covered health care malpractice claim that is the subject of the action is issued under the applicable alternative dispute resolution system; and

(B) any party has filed the notice of intent required by paragraph (1).

(3) COURT OF COMPETENT JURISDICTION.—For purposes of this subsection, the term ''court of competent jurisdiction'' means—

(A) with respect to actions filed in a State court, the appropriate State trial court; and

(B) with respect to actions filed in a Federal court, the appropriate United States district court.

(d) LEGAL EFFECT OF UNCONTESTED ADR DECISION.—A decision reached under an alternative dispute resolution system that is not contested under subsection (c) shall, for purposes of enforcement by a court of competent jurisdiction, have the same status in the court as the verdict of a covered health care malpractice action adjudicated in a State or Federal trial court.

(e) STANDARD OF JUDICIAL REVIEW.—The standard of judicial review of a claim filed under subsection (c) shall be de novo.

(f) AWARD OF COSTS AND ATTORNEYS' FEES AFTER INITIAL ADR RESOLUTION.—

(1) IN GENERAL.—In the case of a covered health care malpractice action brought in any State or Federal court after ADR, if the final judgment or order issued (exclusive of costs, expenses, and attorneys' fees incurred after judgment or trial) in the action is not more favorable to a party contesting the ADR decision than the ADR decision, the opposing party may file with the court, not later than 10 days after the final judgment or order is issued, a petition for payment of costs and expenses, including attorneys' fees, incurred with respect to the claim or claims after the date of the ADR decision.

(2) AWARD OF COSTS AND EXPENSES.—If the court finds, under a petition filed under paragraph (1), with respect to a claim or claims, that the judgment or order finally obtained is not more favorable to the party